



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00HY/LSC/2021/0050

Property : 126 Carmelite Way, The Friary, Salisbury,
Wiltshire SP1 2HW

Applicant : Ms Grace Alba Parks

Representative : ----

Respondent : Wiltshire Council

Representative : Ms Hemans of Counsel instructed by
Davitt Jones Bould Limited

Type of Application : Paragraph 5A of Schedule 11 to the
Commonhold and Leasehold Reform Act
2002

Tribunal Member(s) : Judge J Dobson
Mr N Robinson FRICS
Mr M Jenkinson

Date of Decision : 11th November 2022

DECISION

Summary of the Decision

1. **The Tribunal grants the Applicants' application pursuant to Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in part. The Tribunal limits of the costs of these proceedings which the Respondent may recover as service charges to two- thirds.**

The Application and Procedural History

2. The Applicant sought what was treated throughout as a determination of service charges in the year 2019, said to be approximately £18,500 by way of an application dated 4th June 2021 and pursuant to section 27A of the Landlord and Tenant Act 1985 ("the Act"). The Applicant also sought a determination that the Respondent's costs of the proceedings should not be recoverable as service charges pursuant to section 20C of the Act by application of the same date.
3. There was no application pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for an order that the liability to pay an administration charge in respect of contractual litigation costs be reduced or extinguished. That was briefly mentioned in the Decision in relation to the section 27A and section 20C applications. It was noted at that time that the lack of an application may reflect the Applicant having used an incorrect form for the section 27A application (having used a section 20C one by mistake, although no point was taken about that) and so the question as to a paragraph 5A application which would have appeared on the correct form did not appear on the form used and specific to a section 20C application. It was noted that the Applicant would need to make a Paragraph 5A application separately if she wished to do in light of the matters covered in the Decision about the other applications.
4. The Applicant subsequently did so. Directions were given in relation to that dated 8th July 2022, providing details of the steps to be taken and the dates for those and providing for a paper determination of the application.
5. The parties have subsequently provided written submissions, the Respondent attaching two case authorities- see below. The Applicant provided a short reply to the submissions of the Respondent.

The Background and the Lease

6. The Applicant is the lessee of a three- bedroom maisonette, number 126 Carmelite Way ("the Property"), within a building comprising the even numbers of 116- 128 ("the Building) and situated on The Friary estate ("the Estate") in Salisbury. Considerably greater detail about those and related matters are set out in the Tribunal's Decision dated 30th May 2022 ("the May decision").

7. The Applicant's application in relation to the service charges for 2019 in respect of roofing and similar works produced the outcome that the Tribunal held the service charges to be reasonable. Nevertheless, the May Decision contained some criticism of the Respondent's approach to the works.
8. The Tribunal noted its wide discretion to do that which it considered just and equitable in all the relevant circumstances and that whilst there is caselaw in respect of general principles applicable to section 20C applications, in practice much will depend on the specific circumstances of the particular case. In the event, the Tribunal reduced the costs of the proceedings which could be recovered against the Applicant as service charges to two-thirds of those costs, necessarily subject to determination of the reasonableness of the amount of any such resultant service charges if such reasonableness were challenged.
9. The Tribunal additionally observed that neither party addressed the question of whether the Lease does in fact permit the Respondent to recover any litigation costs as service charges in any event and the Tribunal did not make any determination as to whether the Respondent is in fact able to recover any costs in the first place.
10. It is likely that if there had been an application before the Tribunal in respect of whether there should be any limit to litigation costs being recoverable pursuant to paragraph of Schedule 11, that would have been dealt with in the same part of the May Decision.

The Law

11. Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 provides the following:
 - 1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
 - (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
 - (3) In this paragraph—
 - (a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
 - (b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings."

Consideration of the parties' cases

12. The Tribunal makes it clear that the Tribunal has read all of the documents provided by the parties in respect of this application but does not consider it necessary to refer to all of those in detail. That should neither be taken to imply that the contents of such documents have been ignored or that their

contents are fully accepted. The parties' cases are summarised. Other matters are referred to as far as required to explain the Decision.

13. The Applicant's statement of case is expressed to seek the disallowance of the two-thirds of the Respondent's legal costs that were not disallowed in the May Decision. The Applicant goes on to set out various reasons why she asserts that approach ought to be taken, relating to the Respondent failing to follow policies and referring to exceptional hardship. Reference is also made to a lack of estimates and disputing the need for as much expert evidence. The statement of case attaches extracts from policies and a detailed breakdown of income and expenditure.
14. The point regarding the amount of expert evidence may be relevant to the amount of service charges and administration charges and any potential challenge to those and is not a matter appropriate for this Decision.
15. The application for disallowance of the two-thirds not disallowed as service charges misunderstands the difference between service charges and administration charges and the two different provisions in section 20C and paragraph 5A of Schedule 11.
16. Legal/ litigation costs may potentially be recovered as service charges and/ or administration charges. The disallowance of one third of such costs being recoverable as service charges does not mean that the current application can be used to seek to disallow the remaining two thirds as service charges, to which paragraph 5A of Schedule 11 does not relate. Equally, the section 20C of the May Decision does not disallow the recovery of any of the legal/ litigation costs as administration charges.
17. The question of the extent to which legal costs may be recovered as service charges was therefore concluded by the May Decision: the question of the extent to which costs may be recovered as administration charges is live in its entirety.
18. It that regard, the Tribunal takes account of the other matters raised by the Applicant together with the findings made in the May Decision.
19. The Respondent has replied with a detailed statement of case by Ms Hemans of Counsel, which correctly identifies that the Tribunal may make whatever order it considers just and equitable. It asserts that the Applicant has only sought to extinguish in full liability for administration charges and not to limit such charges and argues that there is no basis for the charges being extinguished. However, the Respondent also accepts that as the Tribunal is able to make whatever order it determines to be just and equitable, the Tribunal is not limited to either extinguishing entirely the liability for administration charges or not doing so.
20. The Respondent refers to the authority of *Ramjotton v Patel* [2020] UKUT 19 (LC), an authority of which the Tribunal is aware, and the statement in that judgment that the same principles that apply to a paragraph 5A application also apply to a section 20C application. Necessarily, the reverse

also applies. The Respondent particularly points to the asserted “apparent acceptance” by the Upper Tribunal that:

“So far as an unsuccessful tenant is concerned, it requires some unusual circumstance to justify an order under section 20C”.

21. “Apparent acceptance” is less than the strongest basis on which to advance matters and should be treated with some circumspection. The Tribunal did in the May Decision make an order in favour of the Applicant under section 20C which has not been challenged by the Respondent and where the Respondent’s submissions accept the extent of that order, which it is contended by the Respondent should be the maximum extent to which the paragraph 5A application should be granted.
22. However, the Tribunal is not in any event constrained by its May Decision and also has additional information not received at that time, although the Tribunal explained why it took the approach taken to the section 20C application and those factors remain of considerable relevance.
23. The Respondent also refers to the oft- cited decision of the Upper Tribunal in *Church Commissioners v Mrs Khadia Derdabi* [2011] UKUT 380 (LC), to which the Tribunal alluded in the May Decision, and the references to the broad starting point of considering the extent to which the lessee has been successful and also considering other relevant circumstances and factors. The Respondent particularly highlights the Tribunal’s determination in respect of both the windows and the roof.
24. Various other submissions are made in the Respondent’s detailed statement of case but need not be recorded here.
25. The Applicant’s reply to the Respondent’s case asserted that the current situation in the world amounts to unusual circumstances and queries how much she is liable to pay. Two parts of the May Decision are quoted, although one relates to service charges rather than the subject of this application i.e., administration charges.

Decision and reasons

26. The Tribunal does not consider it to be just and equitable to grant the applications in full but rather determines that the just and equitable approach is to disallow the recovery of the same portion of the Respondent’s litigation costs as administration charges as the Tribunal did in respect of service charges. Irrespective of whether the Applicant only applied for the administration charges to be extinguished, the Tribunal determines that its ability to make whatever order it determine just and equitable includes the ability to reduce the recoverable charges.
27. The Tribunal has again noted the Applicant’s lack of success in this matter and re-iterates the statement made in the May Decision that success alone is not determinative, although it is never irrelevant. The Tribunal has also again considered the potential practical and financial consequences of the

approach taken by it, but that remains only one of a number of relevant considerations, where there is no limit to what may be relevant to the question of the order just and equitable.

28. The Tribunal again notes that the Respondent has incurred what is likely to have been considerable expense in dealing with this application and where the appropriateness of seeking external legal advice and incurring the consequent expense is a matter which may be very relevant to the amount of any service charges demanded but not directly to the immediate question of potentially preventing the Respondent charging litigation costs as administration charges.
29. The Tribunal continues to consider it appropriate to take account of the communications failings, as the Tribunal has described them, of the Respondent and their contribution to an environment in which the Applicant could consider that the Respondent had not fully addressed all relevant matters and had not had proper regard to the interests of lessees such as the Applicant who were liable for a share of the costs incurred in the works being undertaken. The Tribunal found the Respondent's wider approach to be a reasonable one but that was not a ringing endorsement of all elements of it and also found that the Lease could have been drafted in a rather clearer manner.
30. The Tribunal does not consider that the additional matters raised by the Applicant essentially as to whether the Respondent should have sought to recover any or all of the costs by way of service charges from the Applicant add weight to the Applicant's arguments. The Tribunal determines that the Applicant has failed to demonstrate any inappropriateness in the Respondent demanding such charges.
31. The policies to which the Applicant refers are in respect of matters considered or akin to matters considered in the May Decision. As the Applicant herself states, the Freedom of Information Policy was referred to in the Applicant's original statement of case; maintenance of the roof is discussed amply in the May Decision and fire risk was at the heart of the dispute. The Tribunal agrees with Ms Hemans that there is no material difference in the position now from that in May. The Tribunal does not consider there to be any proper scope for criticism of the Respondent in seeking expert evidence and also notes both the circumstances in which expert evidence was considered relevant as set out in previous Directions and the extent of the questioning of the expert.
32. Taking all of the above matters together, the Tribunal considers that it is appropriate for there to be a reduction in the litigation costs recoverable in the first instance as administration charges to the same extent as the legal costs recoverable as service charges, irrespective of any later challenge to the amount. The Tribunal limits the costs recoverable as administration charges to two-thirds.
33. For the avoidance of doubt, the timescale for payment of any administration charge sums as may be payable and reasonable and/ or the

rate of any such payments are not matters for determination of this Tribunal, whether now or in the event of charges being demanded and there being any consequent challenge to their reasonableness which the Tribunal subsequently determines.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.